

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR
FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929**

WP(C).No. 33120 of 2004(S)

OA.810/2001 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH.
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PETITIONERS:

- 1. DIRECTOR OF ACCOUNTS (POSTAL),
KERALA CIRCLE, G.P.O. COMPLEX,THIRUVANANTHAPURAM.**
- 2. DIRECTOR GENERAL,
DEPARTMENT OF POSTS, POSTAL ACCOUNTS WING,
SANSAD MARG, NEW DELHI-1.**
- 3. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF
COMMUNICATIONS, NEW DELHI.**

BY ADV. SRI.S.KRISHNAMOORTHY, ADDL.CGSC

RESPONDENTS:

- 1. M.SHAHUL HAMEED,
SENIOR ACCOUNTANT (RETD.), OFFICE OF THE
DIRECTOR OF ACCOUNTS (POSTAL), IVTH FLOOR,
G.P.O. COMPLEX, THIRUVANANTHAPURAM.**
- 2. C.A.T. ERNAKULAM BENCH,
REPRESENTED BY ITS REGISTRAR.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23/03/2007, ALONG WITH WPC NO. 34992 OF 2004 THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

W.P.(C) NO.33120/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE OA. 810/01 FILED BEFORE THE CAT, ERNAKULAM.

**EXT.P2:- COPY OF THE REPLY STATEMENT FILED BY THE
PETITIONERS/RESPONDENTS IN OA.**

**EXT.P3:- COPY OF THE COMMON ORDER DT.26.4.04 OF THE CAT, ERNAKULAM IN OA.
810/01.**

**EXT.P4:- COPY OF THE JUDGMENT IN WP(C) NO.21205-21222/99 DT.10.7.02 OF THE
KARANTAKA HIGH COURT.**

/TRUE COPY/

tss

J.B. Koshy & T.R. Ramachandran Nair, JJ.

W.P.(C).NOs.33120 & 34992 of 2004

Dated this the 23rd day of March, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

These writ petitions have been filed challenging the common order in O.A.Nos.810/2001 and 816/2001 passed by the Central Administrative Tribunal, Ernakulam Bench. Since common questions arose, the Tribunal disposed of the applications as per a common order. Therefore, these writ petitions are also disposed of by a common judgment.

2. The applicants in the respective applications have been working as Senior Accountants under the petitioners. The Tribunal has narrated the facts in O.A. No.810/2001 for disposal of the applications, which will be sufficient for the purpose of these writ petitions also, as the documents produced and reliefs sought for are identical.

3. The applicant in O.A. No.810/2001 was promoted from the rank of Junior Accountant to that of Senior Accountant on 17.6.1978 and consequent on the said promotion, his pay was fixed under F.R. 22(c) at Rs.455/- in the scale of Rs.425-640 and he drew his next increment on 1.6.1979 raising his pay to Rs.470/-. It is at the relevant time, the O.M. date

16.1.1980 was issued declaring the selection grade as non-functional retrospectively from 1.8.1976 and also revising the scale of Rs.425-700. His pay was fixed at Rs.455/- pursuant to the same, but considering that he was already drawing Rs.470/-, the drop in pay was compensated allowing an addition of Rs.15/- as personal pay to the basic pay of Rs.455/-. He was allowed to count the personal pay until he drew his next increment in the revised scale. Later, an option was allowed under F.R. 23 to those appointed as Senior Accountants between 1.8.1976 to 15.1.1980 for retaining the old scale of pay of Rs.425-640 until the date on which they would earn their next or any subsequent increment. Accordingly, the applicant opted for the old scale of pay until the date on which he would earn the next or any subsequent increment. His pay was fixed at Rs.485/- on 1.6.1980 and he drew his next increment on 1.6.1981 raising his pay to Rs.500/-. Subsequently, on 1.4.1987 again the post of Senior Accountant was graded as functional in a higher scale and the applicant was given the benefit of F.R. 22(c). The petitioners subsequently sought to refix the pay of the applicant from 17.6.1978 on the premise that he had availed the benefit of F.R. 22(c) twice. In these circumstances, he filed representation which was disposed of by Annexure A9 wherein the stand taken is that the benefit of F.R. 22(c) twice in the same scale of pay is not admissible and that the recovery of over payments of pay and allowance is inevitable.

Challenging the same, the applicant filed O.A. No.1137/1998 wherein the Tribunal after quashing the memo, directed first respondent in the O.A. to pass a speaking order. A fresh order was passed, as Annexure 12 which was under challenge in O.A. No.810/2001.

4. In O.A. No.816/2004 also, the applicant's pay on promotion as Senior Accountant on 30.5.1977, was fixed as Rs.455/- in the scale of Rs.425-640 under F.R. 22(c) when it was a functional post. The facts of the above O.A. are also similar and therefore the same are not repeated here. the final order passed which is under challenge in the O.A. is Annexure A14 which is on similar lines.

5. Before the Tribunal both the applicants contended that at the first instance even though F.R. 22 © was applied, the benefit of that fixation was taken away when the post became non-functional and hence the contention taken by the petitioners herein before the Tribunal that the benefit was granted twice, is not correct. This aspect was considered by the Tribunal in detail. It was found by the Tribunal that when the post of Senior Accountant was declared as non-functional post on 16.1.1980 retrospectively from 1.8.1976, the scale of pay was revised but the applicants were given protection by fixing their pay at a lower stage and allowing the difference as personal pay until they earn an increment in the new scale. The Tribunal therefore found that it cannot be said that the

benefit of F.R. 22(c) fixation was given to the applicants at that time. It is clear from the facts narrated above that what was granted was only a protection of pay and therefore it was evident that the benefit given under F.R. 22(c) was withdrawn. The Tribunal also found that the contentions raised by the petitioners herein are not supported by the relevant rules also. When the post became functional later, the parties have opted for the fixation entitled to them. This was also justified.

6. Counsel for the petitioners argued that the Tribunal's view ignores the fact that there had been fixation twice under F.R.22(c) on the appointment as Senior Accountant. The said argument is not correct in the light of the factual position. For the period from 1.8.1976 to 15.1.1980, it was a functional post. When the post became non-functional, the benefit under F.R.22(c) was terminated. The post became functional again on 1.4.1987, from which date the benefit was granted. We find that the view taken by the Tribunal is perfectly justified and the contentions raised by the petitioners are not supportable in law. As the Tribunal has elaborately considered the factual matrix in the correct legal perspective and on a proper interpretation of the rules, we affirm the said findings.

At any rate, the petitioners have not made out any case for

interference under Article 227 of the Constitution of India. Therefore, the writ petitions are dismissed.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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